IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

F.A.O. No. 92 of 2006

Judgment reserved on:13.10.2006

Date of decision: 9th November, 2006

Chandresh Kumari **…..Appellant.**

VERSUS

Bir Singh **…..Respondents.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr.Vikas Bhardwaj,Advocate

For the Respondent : Mr.Neel Kamal Sood, Advocate

Deepak Gupta, J.

The parties, who are Hindus, got married on 13.4.1995. Out of this wedlock, one male child was born on 10.5.1996. According to the husband he was posted at Kinnaur at the time of the birth of their child. He was thereafter posted to Hamirpur. The child of the parties was suffering from some serous problem and the wife took the child to her parental home at Palampur on the pretext that she wanted to get proper treatment for the child. The husband alleges that he visited the parental house of the wife a number of times and asked the wife to join him, but she did not accompany him to the matrimonial home and has deserted him for a continuous

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

period of 4 to 5 years prior to filing of the petition. It is also alleged that on 2.7.2000 when the husband visited the parental house of his wife alongwith his relative and friends, he was humiliated, insulted and abused by the wife's father and cousin. Another allegation is that previously the husband had filed a petition for restitution of conjugal rights which was decreed in his favour by the Senior Sub Judge, Hamirpur on 10.5.2000. Despite this, the wife refused to join the company of the husband.

The wife filed reply to the application and according to her it was the husband who had treated her with cruelty and had beaten her a number of times. She also pleaded that the husband alleged that she (the wife) was not a suitable match for him. It is also stated in the reply that the minor child was suffering from a serious disease and it is the wife who always looked after the minor child and spent the money on his treatment. The father, despite being the natural guardian, failed to take any interest in the well being of the child. On the pleadings of the parties the learned trial court framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty and also deserted him for the period not less than two years

preceding the institution of the petition and if so, to what effect ? OPP

1(a) Whether the respondent has failed to obey the decree of restitution of conjugal rights dated 10.5.2002 as alleged, if so its effect ? OPP

2. Relief.

The parties led evidence and the learned trial court on the basis of the evidence decided both the issues in favour of the husband and dissolved the marriage between the parties by granting a decree of divorce. Hence the present appeal by the wife.

I have heard Mr.Vikas Bhardwaj, learned counsel for the appellant and Mr.Neel Kamal Sood, learned counsel for the respondent. I have also perused the entire record of the case.

There is no dispute with regard to the fact that the parties are living separately from 1998. According to the husband when he was transferred from Kinnaur to Hamirpur, the wife without his permission left him and started residing with her parents. According to him despite repeated requests having been made, the wife did not join his company. He states that he made various efforts by taking his friends and relatives to the parental

house of the wife to convince her to come back to her matrimonial home, but she did not do so. He thereafter filed a petition for restitution of conjugal rights which was decreed in his favour, but despite this the wife did not reside with him. He has been cross examined at length and the main thrust of the cross examination is that he did not help the wife to look after the ailing child. He admits that he has virtually spent no money on the treatment of the child. A suggestion has been put to him that in fact he had sent the wife to her parental home for the purpose of delivery. He has denied the suggestion that he did not spend any money for the delivery of his child. He has also denied the suggestion that he had ill-treated his wife and his child.

PW-2 Joginder Singh is the Ward Panch of Gram Panchayat Uhl. According to him in January, 2000 he alongwith the husband and some other persons had gone to the parental house of the wife to convince her to return to her matrimonial home, but she did not agree. She in fact refused to come with him. He has denied the suggestion that he alongwith 5-6 other persons had entered the parental house of the wife and broke some goods there and beat the family members of the wife.

PW-3 is K.S.Singh, whose statement is similar to that of PW-2. He has also stated that he again went in November, 2002 alongwith the husband to bring back the wife, but she refused to come.

On the other hand, the wife has examined herself as RW-1. She alleges that when she stayed with her husband at Kinnaur in the year 1998 he troubled her and tried to force her to grant him divorce. She further states that thereafter the husband was transferred to Hamirpur and started living in village Baloh. According to her when she was in an advanced stage of pregnancy, the husband left her at her parental home and gave her only Rs.200/- for expenses and her parents bore the entire expenses of her delivery. She also states that in village Baloh her son fell ill, but the husband did not take any interest with regard to the treatment of the son and she alone has had to look after the minor child, who was suffering from a serious illness. According to her despite intimations having been given to the husband, he took no interest whatsoever in the treatment of the child. She further states that in January, 2000 the husband alongwith four other persons came to her parental home in her absence. Her version is that these persons

behaved in a rude and insulting manner with her parents and broke the window panes of her house and also some flower pots. She also states that once her husband came to the school where she was employed at Sarimolag and twice at Sidhpur to convince her to agree for divorce. In cross examination she admitted that the child was born in May, 1996 and that she lived with her husband after the delivery of the child till April, 1998. She also states that she stayed for a few days with her husband at Hamirpur. She states that she went to her parental house from Hamirpur in August, 1998 because her child was suffering from serious illness and had to be taken to Post Graduate Institute, Chandigarh for regular checkup. The wife has stated that her husband used to complain that she is ugly and, therefore, wants divorce. She has also stated in cross examination that her parents has lodged an FIR against the husband and the other persons who accompanied him, but this was withdrawn by her at a later stage.

RW-2 is a police witness who has proved FIR No. 8, dated 3.1.2000 lodged at the instance of Ganga Ram Negi under Sections 452, 147, 149, 323, 506 I.P.C. In cross examination he admits that this FIR has been

cancelled. He has, however, not been able to say whether the FIR was cancelled because no case was made out.

RW-3 Gayatri Devi is a colleague of the wife and according to her once when the wife was coming out of the school then the husband had abused her and also pulled her from her arm.

Mr.Vikas Bhardwaj, learned counsel for the appellant, has taken me through the entire record and evidence and has stressed that the entire record reveals that the fault, if any, is of the husband alone and no portion of the blame can be apportioned upon the wife. He urges that the wife has had to look after a serious ill child all by herself and it is for this reason that she could not contest the proceeding for restitution of conjugal rights. He submits that this decree was obtained by the husband ex parte since the wife could not contest the same. He has also laid great emphasis on the observations of the permanent Lok Adalat to which the case was referred that the husband should take the wife with him. He relied upon a Division Bench Judgment of Rajasthan High Court reported in **Ren Prakash Vs. Mst.Shen Lata 2002(2) Civil Court Cases 352.** He also relies upon another Division Bench judgment of this court

reported in **Bharti Sharma Vs. Surinder Kumar Sharma 2003 (2) S.L.C. 255** and submits that since the fault, if any, is of the husband, the husband cannot be granted divorce.

A perusal of the entire material on record shows that there is some confusion in the statement of the wife. She puts great emphasis on the fact that the husband himself left her home when she was pregnant. She, however, admits that the delivery took place in the year 1996 and thereafter for more than 2 years she lived with her husband. Therefore, in my opinion, the question whether the husband gave her money or not, whether the husband bore the expenses of the delivery in the year 1996 or not, are totally alien to the to the core issue which is whether the wife in the year 1998 left the house of her own without any reasonable cause. A bare reading of the statement of the wife shows that in the year 1998 she left her husband's house of her own accord though according to her, for the reason that he was not looking after the child and since she wanted the child to be treated properly, she took him to Palampur.

On the other hand, the husband is categoric that he did not want the wife to leave and even after she

left, he alongwith his family members went twice to her house to call her back. The facts which stand proved are that since August, 1998 the wife is living at her parental home. She has after leaving her husband acquired a government job. Much reliance has been placed by the wife on the FIR lodged by her parents. Admittedly this FIR stands cancelled The parents of the wife who had lodged the FIR and who were the best witnesses to depose about the occurrence were not examined for reasons best known to the wife. She chose not to examine her family members or other close relatives who could have deposed with regard to the efforts, if any, made by the husband. She, on the other hand, chose to examine only one colleague of hers who spoke about the incident outside the school. The statement of this witness (RW-3) does not inspire confidence. Her statement is in fact in variance to the statement made by the wife.

It may be true that the wife has been looking after the minor child who is clearly suffering from a serious disorder. However, this by itself does not show that she has been treated with cruelty. She has left her matrimonial home out of her own record and has failed to prove that she was forced to leave the matrimonial home.

She has not proved any such circumstance which could have forced her to leave her husband. The statement of RW-3 does not inspire confidence at all. She has stated such facts which have not been stated by the wife herself. Her evidence is not at all worthy of credence. In view of the above facts I uphold the finding of the learned trial court that the husband has proved that the wife had deserted him from August, 1998.

The wife has also admitted that she was aware about the proceeding under Section 9 of the Hindu Marriage Act. Her only explanation is that since she was busy with the treatment of her son, she could not contest that petition. This petition, though decided ex parte, has attained finality. The wife could have filed an application for setting aside proceedings or could have filed an appeal against the final order. She has not chosen to do so. It is not a case where the wife pleads that she was not aware about the proceeding. She was aware about the proceeding, appeared in court, but chose not to contest the same. This also shows that she had no intention of joining the company of the husband. The husband is also entitled to divorce on the ground that the wife has not

complied with the decree for restitution of conjugal rights passed against her.

In the light of the aforesaid discussion I am of the opinion that the appeal is without any merit which is dismissed with no order as to costs.

November 9, 2006(K) (Deepak Gupta), Judge